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Attorneys for Defendant  
**CITY OF EAST PALO ALTO**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Defendant CITY OF EAST PALO ALTO (hereinafter “Defendant”) hereby answers the “First Supplemental Complaint for Declaratory Relief, Injunctive Relief and Inverse Condemnation” (hereinafter “the Complaint”) filed by Plaintiff PALO MOBILE ESTATES ASSOCIATES (hereinafter “Plaintiff”) as follows:

1. Answering paragraph 1, without waiving any of Defendant's affirmative defenses as to whether Plaintiff's claims for relief are ripe for review or otherwise fail to meet the case or controversy

1 requirement of Article III of the United States Constitution, Defendant admits that this Court has  
2 subject matter jurisdiction over this action under 28 U.S.C. sections 1331 and 1337. This Court has  
3 jurisdiction over the Plaintiff's third claim for relief because it arises under the Fifth and Fourteenth  
4 Amendments of the United States Constitution, and this Court has supplemental jurisdiction over  
5 Plaintiff's first and second claims for relief. Except as expressly admitted, Defendant denies each and  
6 every allegation contained in paragraph 1.

7       2. Answering paragraph 2, Defendant admits that the City of East Palo Alto is located in  
8 the County of San Mateo and that this Court has personal jurisdiction over Defendant. Except as  
9 expressly admitted, Defendant denies each and every allegation contained in paragraph 2.

10      3. Answering paragraph 3, Defendant admits that this action is properly venued in the  
11 United States District Court for the Northern District of California. Except as expressly admitted,  
12 Defendant denies each and every allegation contained in paragraph 3.

13      4. Answering paragraph 4, Defendant is without sufficient knowledge or information to  
14 form a belief as to the truth of the allegations contained in paragraph 4 and on that basis denies the  
15 allegations contained in paragraph 4.

16      5. Answering paragraph 5, Defendant admits that Defendant is a municipal corporation,  
17 organized and existing under the laws of the State of California.

18      6. Answering paragraph 6, Defendant denies the allegations set forth in paragraph 6.

19      7. Answering paragraph 7, Defendant denies the allegations set forth in paragraph 7.

20      8. Answering paragraph 8, Defendant admits that the Palo Mobile Estates mobilehome  
21 park ("the Park") is located in the City of East Palo Alto. On May 1, 2007, Defendant received an  
22 incomplete application to convert the Park from a rental mobilehome park into a resident-owned  
23 mobilehome park. The application remains incomplete and has not been approved by Defendant. The  
24 application is subject to section 66427.5 of the Government Code, the relevant provisions of the  
25 Subdivision Map Act, and the relevant provisions of Defendant's Municipal Code. If the conversion  
26 occurs, then Defendant's rent control ordinance with regard to the Park will be supplanted by the  
27 relevant State law. Except as expressly admitted, Defendant denies each and every allegation  
28 contained in paragraph 8.

1       9. Answering paragraph 9, Defendant admits that there are statutes that regulate  
2 mobilehome parks and the conversion of mobilehome parks from rental parks into resident-owned  
3 parks. Except as expressly admitted, Defendant denies each and every allegation contained in  
4 paragraph 9.

5       10. Answering paragraph 10, Defendant admits that section 66427.5 of the Government  
6 Code applies to conversions of mobilehome parks from rental parks into resident-owned parks.  
7 Section 66427.5 of the Government Code speaks for itself, and its interpretation and application is a  
8 matter of dispute in this litigation. The California Department of Real Estate is involved with  
9 mobilehome park conversions after the conversions have been approved by the local regulatory body.  
10 Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 10.

11       11. Answering paragraph 11, Defendant admits that on May 1, 2007, Defendant received an  
12 incomplete application to convert the Park from a rental mobilehome park into a resident-owned  
13 mobilehome park. The application is not complete and has not been reviewed or approved by  
14 Defendant. Except as expressly admitted, Defendant denies each and every allegation contained in  
15 paragraph 11.

16       12. Answering paragraph 12, Defendant is without sufficient knowledge or information to  
17 form a belief as to the truth of the allegations contained in paragraph 12 and on that basis denies the  
18 allegations contained in paragraph 12.

19       13. Answering paragraph 13, Defendant admits that a letter dated March 9, 2007 from an  
20 attorney representing Plaintiff to the City Council of the City of East Palo Alto objected to Defendant's  
21 proposed 45-day moratorium on the conversion of rental mobilehome parks into resident-owned  
22 mobilehome parks and set forth several arguments as to why Plaintiff held the belief that Defendant  
23 could not legally enact this moratorium, including arguments that the subject matter of the moratorium  
24 was preempted by state law and that the moratorium could not be enacted under section 65858 of the  
25 Government Code. Except as expressly admitted, Defendant denies each and every allegation  
26 contained in paragraph 13.

27       14. Answering paragraph 14, Defendant admits that on March 13, 2007, the City Council of  
28 the City of East Palo Alto enacted Ordinance No. 299 which imposed a 45-day moratorium on the

1 conversion of rental mobilehome parks into resident-owned mobilehome parks. A copy of Ordinance  
 2 No. 299 is attached to the Complaint as Exhibit "A." Except as expressly admitted, Defendant denies  
 3 each and every allegation contained in paragraph 14.

4       15. Answering paragraph 15, Defendant admits that a letter dated April 13, 2007 from an  
 5 attorney representing Plaintiff to the City Council of the City of East Palo Alto objected to the  
 6 extension of Defendant's moratorium on the conversion of rental mobilehome parks into resident-  
 7 owned mobilehome parks and set forth several arguments as to why Plaintiff continued to hold the  
 8 belief that Defendant could not legally enact this moratorium, including arguments that the subject  
 9 matter of the moratorium was preempted by state law and that the moratorium could not be enacted  
 10 under section 65858 of the Government Code because there was no current and immediate threat to the  
 11 public health, safety, or welfare and that such a conversion is not a "change of use." Except as  
 12 expressly admitted, Defendant denies each and every allegation contained in paragraph 15.

13       16. Answering paragraph 16, Defendant admits that following a hearing on April 24, 2007,  
 14 the City Council of the City of East Palo Alto adopted Ordinance No. 300, which extended for three  
 15 months, until July 27, 2007, the moratorium on the approval of applications to convert rental  
 16 mobilehome parks into resident-owned mobilehome parks. Representatives of Plaintiff attended the  
 17 meeting and objected to the moratorium, continuing to argue that it was illegal. Section 2 of  
 18 Ordinance No. 300 states: "During the period this ordinance remains in effect, no permit or approval of  
 19 any entitlement application shall be granted allowing the conversion of a mobilehome park to resident  
 20 ownership within the city of East Palo Alto." Section 1, subsection (i), of Ordinance No. 300 states:  
 21 "The City Council finds that the extension of the temporary moratorium is necessary to provide staff  
 22 and advisory bodies sufficient time to study the issues and make recommendations on whether and  
 23 how to regulate mobilehome park conversions consistent with the provisions of Gov. Code § 66427.5."  
 24 Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 16.

25       17. Answering paragraph 17, Defendant denies the allegations set forth in paragraph 17.

26       18. Answering paragraph 18, Defendant admits that in a letter dated July 6, 2007 to the City  
 27 Council of East Palo Alto, an attorney for Plaintiff argued that a proposed ordinance to implement  
 28 regulations for the conversion of rental mobilehome parks into tenant-owned mobilehome parks would

1 be illegal. Except as expressly admitted, Defendant denies each and every allegation contained in  
2 paragraph 18.

3       19. Answering paragraph 19, Defendant admits that on July 10, 2007 the East Palo Alto  
4 City Council held a public hearing regarding the proposed ordinance. An attorney for Plaintiff  
5 appeared and argued that the proposed ordinance would be illegal. Except as expressly admitted,  
6 Defendant denies each and every allegation contained in paragraph 19.

7       20. Answering paragraph 20, Defendant admits that at the July 10, 2007 meeting of the East  
8 Palo Alto City Council three councilmembers were present. It was decided not to enact the proposed  
9 ordinance as an urgency ordinance, and instead it was introduced as a regular ordinance by a vote of 3  
10 to 0. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph  
11 20.

12       21. Answering paragraph 21, Defendant admits that the East Palo Alto City Council held  
13 the second reading of the proposed ordinance, which was identified as Ordinance Number 305  
14 (hereinafter “the Ordinance”) at its meeting on July 17, 2007. The Ordinance was approved and was  
15 then to go into effect 30 days later. Except as expressly admitted, Defendant denies each and every  
16 allegation contained in paragraph 21.

17       22. Answering paragraph 22, Defendant admits that section 14.18.030 of the Ordinance  
18 states, in part:

19           “A. . . . All requests to subdivide a mobilehome park shall require submission of . . . :

20           “. . .

21           “6. Copies of all Title 25 inspection reports for the previous three years. If there has  
22 been no Title 25 inspection within that time period then one must be obtained.  
23 Subdivider shall provide a list of all deficiencies found on inspection and evidence that  
24 all deficiencies have been corrected. In addition, written documentation from California  
25 department of housing and community development that the park complies with all  
26 applicable Title 25 requirements shall be provided;”

27           “7. An engineering report on the type, size, current condition, adequacy and  
28 remaining useful life of common facilities located within the park, including, but not  
limited to, water systems, sanitary sewer, fire protection, storm water, streets, lighting,  
pools, playgrounds and community buildings. The report shall be prepared by a  
registered civil or structural engineer or a licensed general engineering contractor;

1       “8. All legal documents confirming the legal status of the park, including, but not  
 2 limited to, documents (i) prepared for and defining the powers and duties of the  
 3 proposed homeowner’s association, including articles of incorporation, by-laws, and  
 4 conditions, covenants and restrictions; and (ii) a general title report.

5       “....

6       “D. Report on the Impact of the Conversion on Existing Residents. A report on the  
 7 impact of the conversion upon the residents of the mobilehome park to be converted  
 8 shall be submitted at the time of filing the application for conversion. This report must  
 9 include all information required by state law and this chapter, including:

10      “1. A description of the property, including the number of mobilehomes that are  
 11 owner-occupied and the number of mobilehomes that are rented. For rented  
 12 mobilehomes, the nature of the tenancy (e.g., yearly lease or month-to-month) and the  
 13 name and address of the lessor;

14      “2. The rental rate history for each space for each of the previous five years;

15      “3. A spreadsheet for the statutory rent increase maximums for lower income  
 16 households as set forth in Government Code Section 66427.5(f)(2);

17      “4. The monthly vacancy rate for each month during the preceding two years;

18      “5. The components of existing resident households including family size, length of  
 19 residence, age of residents, estimated household income and whether receiving  
 20 government rent subsidies;

21      “6. The availability of mobilehome spaces within the city limits including the  
 22 current space rent charged for the space, the amenities offered, and any restrictions on  
 23 the type or age of the mobilehome that may occupy the space;

24      “7. An analysis of moving an existing mobilehome to another site that shall include,  
 25 but not be limited to, the availability of other sites, the total costs of relocation to a new  
 26 location, and the likelihood of an existing mobilehome being accepted at other sites;

27      “8. In the event the number of available mobilehome spaces within the city is  
 28 insufficient to accommodate all the residents of the mobilehome park, the report shall  
 29 include a statement of the availability and cost of any non-mobilehome housing  
 30 alternatives located within the city. The report shall also include a description of all  
 31 available mobilehome spaces within thirty (30) miles of the project, the current space  
 32 rent charged, the amenities offered, whether rent control is in effect, and any restrictions  
 33 on the type or age of the mobilehome that may occupy the space;

34      “9. A market rent survey or appraisal in accordance with nationally recognized  
 35 professional standards as set forth in Government Code Section 66427.5(f).

36      “E. Survey of Support of Residents. A survey of support of the residents of the  
 37 mobilehome park for the proposed conversion that meets the requirements of  
 38 Government Code Section 66427.5(d) shall be submitted at the time of filing the  
 39 application for conversion. The survey shall be conducted in accordance with an  
 40 agreement between the subdivider and the homeowners association if such association  
 41 exists. The homeowners association must be independent of the subdivider or  
 42 mobilehome park owner. In the event there is more than one homeowners association,  
 43 the agreement shall be with the one having the greater number of members. The survey

1 shall be obtained pursuant to a written ballot and shall be conducted so that each  
 2 occupied mobilehome space has one vote. Results of the survey shall be considered as  
 part of the subdivision map hearing.

3 “Evidence of the agreement between the subdivider and the homeowners association  
 4 must be submitted with the application. If there is no written agreement, then the  
 subdivider shall provide signed affidavits, under penalty of perjury, from the subdivider  
 5 or the subdivider’s representative and from two officers of the association setting forth  
 the details of the agreement.

6 “The survey of support of residents may be submitted subsequent to the filing of the  
 7 application but at least thirty (30) days prior to the initial hearing, if agreed to in writing  
 by the subdivider and homeowners association.”

8 Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 22.

9       23. Answering paragraph 23, Defendant denies the allegations set forth in paragraph 23.

10       24. Answering paragraph 24, Defendant admits that the opinion in *Kavanau v. Santa*  
 11 *Monica Rent Control Bd.*, (1997) 16 Cal.4th 761, contains the statement on page 779 that “if a property  
 12 owner brings a timely action to set aside or void a regulation, he may *but need not* join a claim for  
 13 damages. Instead, he may bring a damages claim separately after successfully challenging the  
 14 regulation.” Except as expressly admitted, Defendant denies each and every allegation contained in  
 15 paragraph 24.

16       25. Answering paragraph 25, Defendant admits that on May 1, 2007, Plaintiff filed a claim  
 17 with the City under the California Tort Claims Act claiming damages allegedly arising out of the  
 18 Moratorium. In a letter dated June 11, 2007, the City rejected the claim. Except as expressly  
 19 admitted, Defendant denies each and every allegation contained in paragraph 25.

20       26. Answering paragraph 26, Defendant admits that on August 24, 2007, Plaintiff filed a  
 21 claim with the City under the California Tort Claims Act claiming damages allegedly arising out of the  
 22 Ordinance. In a letter dated September 12, 2007, the City rejected this claim. Except as expressly  
 23 admitted, Defendant denies each and every allegation contained in paragraph 26.

24       27. Answering paragraph 27, Defendant realleges its responses to paragraphs 1 through 26  
 25 above.

26       28. Answering paragraph 28, Defendant admits that there is presently a controversy  
 27 between Defendant and Plaintiff regarding the validity of the Ordinance. Except as expressly  
 28 admitted, Defendant denies each and every allegation contained in paragraph 28.

29. Answering paragraph 29, Defendant does not dispute that Plaintiff may be seeking a declaration as set forth in paragraph 29. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 29.

30. Answering paragraph 30, Defendant denies the allegations set forth in paragraph 30.

31. Answering paragraph 31, Defendant realleges its responses to paragraphs 1 through 30 above.

32. Answering paragraph 32, Defendant does not dispute that Plaintiff may be seeking a preliminary and permanent injunction.

33. Answering paragraph 33, Defendant admits that Plaintiff has objected to the Ordinance and that Defendant has not repealed the Ordinance and continues to apply it. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 33.

34. Answering paragraph 34, Defendant denies the allegations set forth in paragraph 34.

35. Answering paragraph 35, Defendant denies the allegations set forth in paragraph 35.

36. Answering paragraph 36, Defendant denies the allegations set forth in paragraph 36.

37. Answering paragraph 37, Defendant realleges its responses to paragraphs 1 through 36 above 37.

38. Answering paragraph 38, Defendant denies the allegations set forth in paragraph 38.

39. Answering paragraph 39, Defendant denies the allegations set forth in paragraph 39.

40. Answering paragraph 40, Defendant denies the allegations set forth in paragraph 40.

41. Answering paragraph 41, Defendant denies the allegations set forth in paragraph 41.

42. Answering paragraph 42, Defendant denies the allegations set forth in paragraph 42.

## AFFIRMATIVE DEFENSES

1. As a first separate affirmative defense, Defendant alleges that the Complaint fails to state a claim upon which relief can be granted.

2. As a second separate affirmative defense, Defendant alleges that Plaintiff has not submitted a complete application to convert the Park from a rental park into a resident-owned park, that Plaintiff has therefore not acted on such an application, and that therefore Plaintiff's claims are not ripe for review.

3. As a third separate affirmative defense, Defendant alleges that because the San Mateo County Superior Court denied Plaintiff's petition for a writ of mandate in *Palo Mobile Estates Associates v. City of East Palo Alto*, San Mateo County Superior Court Case number CIV 463681, in which Plaintiff sought to invalidate the Moratorium, Plaintiff's claims arising out of the Moratorium are barred by the doctrine of claim preclusion.

4. As a fourth separate affirmative defense, Defendant alleges that because the San Mateo County Superior Court denied Plaintiff's petition for a writ of mandate in *Palo Mobile Estates Associates v. City of East Palo Alto*, San Mateo County Superior Court Case number CIV 463681, in which Plaintiff sought to invalidate the Moratorium, Plaintiff's claims arising out of the Moratorium are barred by the doctrine of issue preclusion

5. As a fifth separate affirmative defense, Defendant alleges that Plaintiff's claims arising out of the Moratorium are moot because the Moratorium has expired.

6. As a sixth separate affirmative defense, Defendant alleges that Plaintiffs' claim that the Moratorium effected a taking of its property is barred because Plaintiff never submitted a complete application during the pendency of the Moratorium and therefore this claim was never ripe.

7. As a seventh separate affirmative defense, Defendant alleges that Plaintiff's claims for relief are barred because Plaintiff has not exhausted the administrative remedies that are applicable to its application to convert its mobilehome park from the rental park into a tenant-owned park.

## PRAAYER

**Defendant prays:**

1. That the Complaint be denied and all of its claims for relief be dismissed with prejudice;

2. That Defendant be awarded the costs of suit incurred herein;

3. That Defendant be awarded its reasonable attorney's fees; and

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1       4. That Defendant be granted such other and further relief as this Court may deem just and  
2 proper.

3 Dated: December 5, 2007

JARVIS, FAY & DOPORTO, LLP

4                     By: /s/ Benjamin P. Fay  
5                     Benjamin P. Fay  
6                     Attorneys for Defendant  
7                     CITY OF EAST PALO ALTO

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